IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 194 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAGDISHCHANDRA KESHAVLAL THAKKER - Petitioner
Versus
GOVERNMENT OF GUJARAT & 2 - Respondents

==========

Appearance :
MR BIREN A VAISHNAV for Petitioner:
MS BHAVIKA KOTECHA, LD. AGP for Respondents : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 20/09/2007

ORAL JUDGMENT

1. The petitioner under Article 226 of the Constitution of India has approached this Court for seeking direction to the respondents for

rectifying the date of his birth which was recorded to be 5/12/1939 to 18/2/1942, on the ground that the petitioner has enough material to indicate that his date of birth had not been correctly recorded right from the day of his school till he entered the service of the respondent State. Learned counsel for the petitioner submits that the respondents have declined his request as he had not made request of rectification in time. Learned counsel submits that, in view of the decision of this Court in Special Civil Application No. 3931 of 1994 decided on 15/4/1999 where in similar facts & circumstances the action of retiring the petitioner was quashed and the benefits were ordered to be given to the petitioner therein. Learned counsel submits that in the present case also the facts are similar. His elder brothers birth and death are recorded in the Municipal records which would clearly indicate that the date of birth could not have been 5/12/1939. Learned counsel submits that the respondents be directed to take into consideration the representation that may be filed afresh by the petitioner along with the decision of this Court in Special Civil Application No. 3931 of 1994 and if the same is made, same will be decided in accordance with law.

2. Learned AGP for the State submits that there can not be any objection for any such request.

However let there be a liberty to the State to decide the representation if so made strictly in accordance with law in light of the prevalent resolutions of the Government.

3. In view of this, ordinarily no such petition could have been entertained in view of the settled principle of law, however keeping the Coordinate Bench decision of this Court in Special Civil Application No. 3931 of 1994 and looking to the similar facts in the present petition this Court is inclined to issue following directions:-

It would be open to the petitioner to make afresh representation to the respondents with all the documentary evidences available with him and if the petitioner makes such representation, the respondents are directed to decide the same in light of the prevalent Government resolutions and in accordance with law and the same shall not be rejected only on the ground that it being filed belatedly. It is absolutely open to the respondents to consider the representation on its own merits in light of the prevalent Government resolutions and policies.

4. With these directions this petition is disposed of. Rule discharged. No cost.

[S.R. BRAHMBHATT, J]

/vgn